



22 DEC 2006

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In re Application of
FENICAL, et al.
Application No.: 10/561,711
PCT No.: PCT/US04/19453
Int. Filing Date: 18 June 2004
Priority Date: 20 June 2003
Atty. Docket No.: UCSD1530-5
For: SALINOSPORAMIDES AND METHODS FOR
USE THEREOF

DECISION ON PETITION
UNDER 37 CFR 1.10(c)

This is a decision on applicant's "Request to Withdraw Notification of Abandonment" filed 16 October 2006 in the United States Patent and Trademark Office (USPTO). The petition is being treated under 37 CFR 1.10(c). No petition fee is required.

BACKGROUND

On 18 June 2004, applicant filed international application PCT/US04/19453 which claimed priority to an earlier U.S. application filed 20 June 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 20 December 2005.

On 20 December 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a preliminary amendment.

On 24 March 2006, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) indicating that the present application was abandoned as to the United States national stage for failure to provide payment of the full U.S. Basic National Fee by 30 months.

On 16 October 2006, applicant filed the present petition indicating that the fee payment and filing was made on 20 December 2005; not 21 December 2005 as indicated on the stamped return postcard.

DISCUSSION

37 CFR 1.10(c) states: Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of

the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Applicant has satisfied all three items above. In addition, a review of the USPS track and confirm website shows a date of acceptance by the USPS of "12/20/05 6:03pm." Therefore, it is proper to grant applicant's petition at this time.

CONCLUSION

Applicant's petition under 37 CFR 1.10 is **GRANTED**.

The "Notification of Abandonment" (Form PCT/DO/EO/909) mailed 24 March 2006 is hereby **VACATED**.

This application is being returned to the United States Designated/Elected Office (US/DO/EO) for further processing in accordance with this decision, namely the issuance of a "Notification of Missing Requirements" (Form PCT/DO/EO/905) indicating the need to provide an executed oath or declaration of the inventors.



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